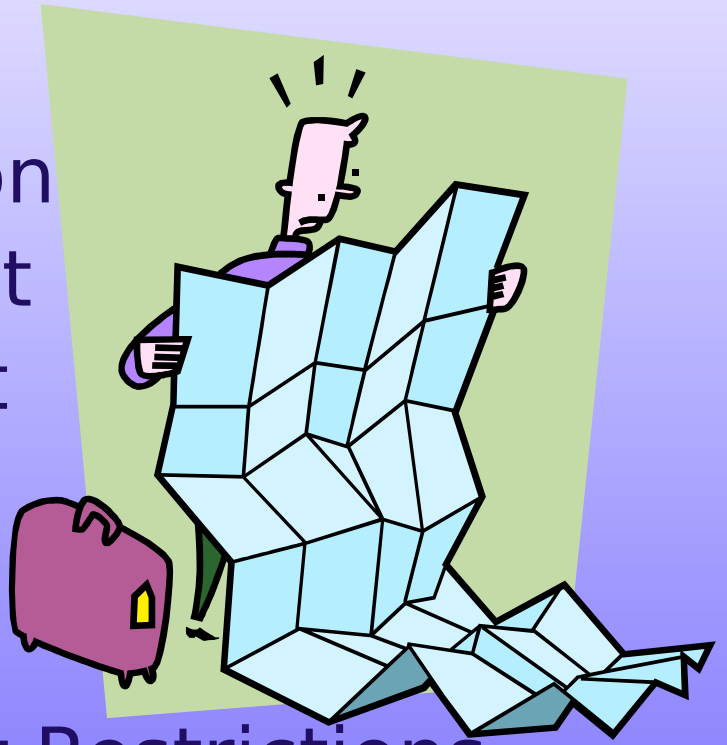
2004 ETHICS WORKSHOP

Victory thru Justice!

Post-Government Service Employment Restrictions

Road Map

- Purpose of Restriction
- Seeking Employment
- Federal Employment Restrictions
- Private Employment Restrictions
- Foreign Employment Restrictions



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Purpose of Restrictions

- Prevent conflicts of interest
- Promote economy in Federal Government
- Expand employment opportunities in the Federal system
- Preserve the public's confidence in Government integrity

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Seeking Employment

- Conflicts of Interest
- Gifts From Prospective Employers
- Working on Terminal Leave

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Conflicts of Interest

18 U.S.C. § 208
5 C.F.R. § 2635.402

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- You may not take any official action that affects a company with which you are negotiating for employment or have an arrangement concerning prospective employment
- JER 5-301 applies to National Guard and enlisted personnel

LOCKHEED MARTIN

Careers

BOEING

employment

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“Seeking Employment”

- 5 C.F.R.2635.603(b)
- You are “seeking employment” when you:
  - engage in negotiations
  - make unsolicited employment contact
    - includes sending resume
    - excludes requesting job applicatio
  - respond to unsolicited proposal (exc
    unconditional reje

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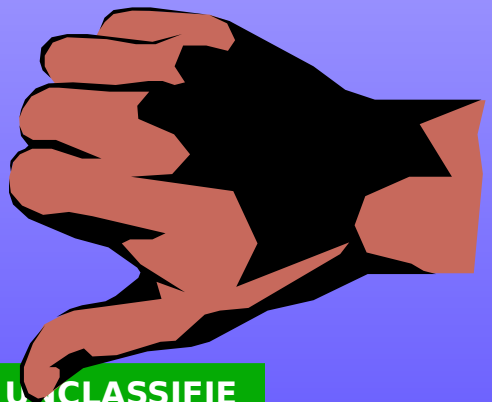
Termination of Seeking Employment

- You are no longer “seeking employment” when:
  - either party rejects proposal and discussions have terminated, or
  - two months have passed after mailing resume and no response



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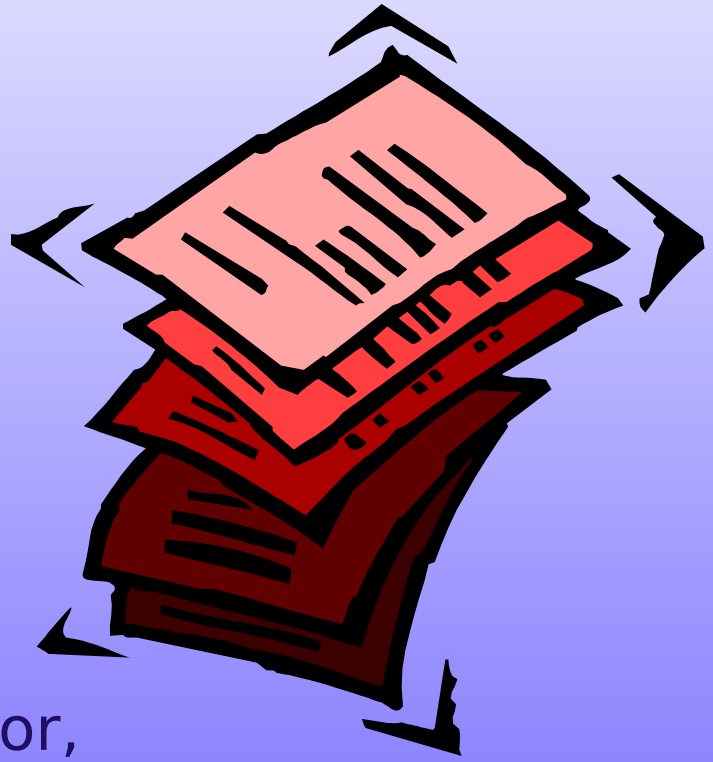
Disqualification

- To avoid violation:
  - Take no action
  - Written notice to supervisor (JER 2-204)
  - Supervisor response:
    - written
    - shielding procedures
    - copy to Ethics Counselor, subordinates



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Procurement Integrity Act

- Special reporting rules for procurement officials
  - Contacts with bidders/offerors in procurements ≥$100K
  - Written "contact report"
  - Special disqualification notice
- Pre-award disclosure of procurement information prohib (present and former officials)

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Gifts From Prospective Employers

5 C.F.R. § 2635.204(e)(3)

- Meals, lodging, transportation, etc. *customarily* offered
- Don't forget to disqualify - if necessary

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Terminal Leave

- May work while on terminal leave
- Financial disclosure form filers (450/278) must obtain agency designee approval if employer will be prohibited source

- Active Duty Officers may not accept outside employment that will interfere with duty performance or require separation from service – 10 U.S.C. 973(a)

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Federal Employment While on Terminal Leave

- If not a “civil office”
  - may receive pay for Federa position and military pay and allowances du terminal leave
  - 5 U.S.C. 5534a
  - DODD 1344.10

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No Civil Offices During Terminal Leave!

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- Civil Office Statute - 10 U.S.C. § 97
  - Active duty military officers may not h civil office
    - Federal/State/Local
    - Exercise Sovereign Power
    - USA/DA/City Attorney/County Clerk
    - AUSA/ADA/Notary

City Attorney
Casey Gwinn

UNITED STATES ATTORNEY'S OFFICE
SOUTHERN DISTRICT OF IOWA

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Can’t Be an Agent While on Terminal Leave!

- 18 U.S.C. §§ 203/205
- Cannot act as an agent fo another before any Fed agency

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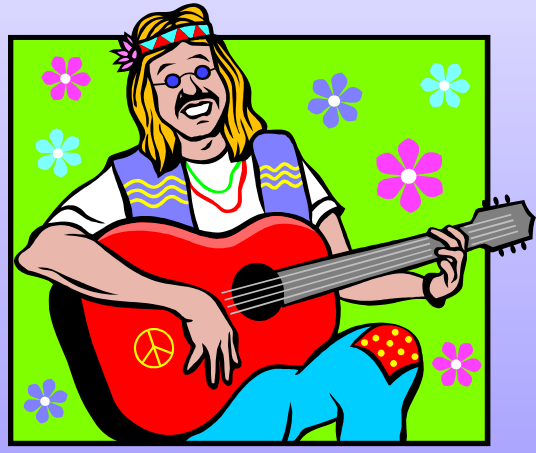
Retired At Last!!!



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Dual Compensation

- Repealed!!!
- Section 651 of the NDAA for FY 2000 (P.L. 106-65) repealed 5 USC 5532 in its entirety
- No reduction in retired or retainer pay for retired member of the Armed Forces who are employed in Federal civilian positions

6-Month Cooling-Off Period

- No civilian employment within DoD for 6 months (5 U.S.C. 3326)
- Applies to <u>all</u> retired military members
- Waivers available from Secretary of hiring component
- National Emergency exception

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Private Employment Restrictions

- Representational restrictions - 18 USC 207

- Procurement Integrity Act
  - 41 USC 423
- Repealed
  - 10 USC 2397
  - 10 USC 281
  - 37 USC 801
  - No more DD Form 1787

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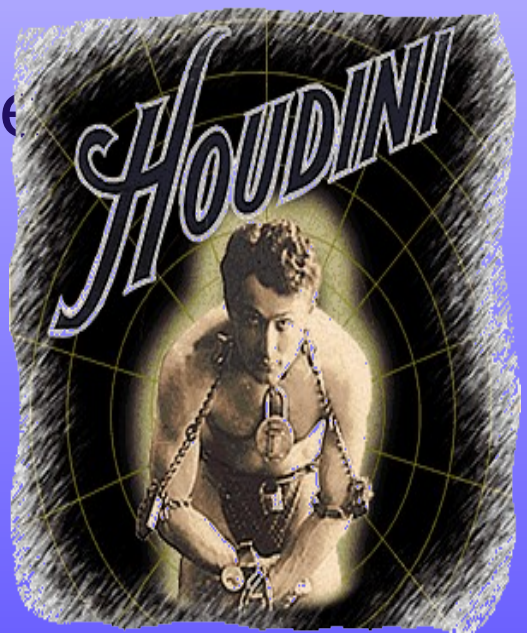
Private Employment Restrictions

18 U.S.C. § 207

- Designed to curb “switching sides”
- ***DOES NOT*** prohibit acceptance of employment
- ***MAY*** restrict scope of employee’s activitie



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Representational Restrictions

18 U.S.C. § 207

Victory thru Justice!

- Prohibits representing another before U.S. Government with intent to influence
  - Lifetime ban
  - 2-year ban
  - 1-year cooling-off period for senior employees
  - 1-year ban on treaty negotiations
  - 1-year ban on senior employees representing foreign entities

"We represent the Lollipop Guild!"

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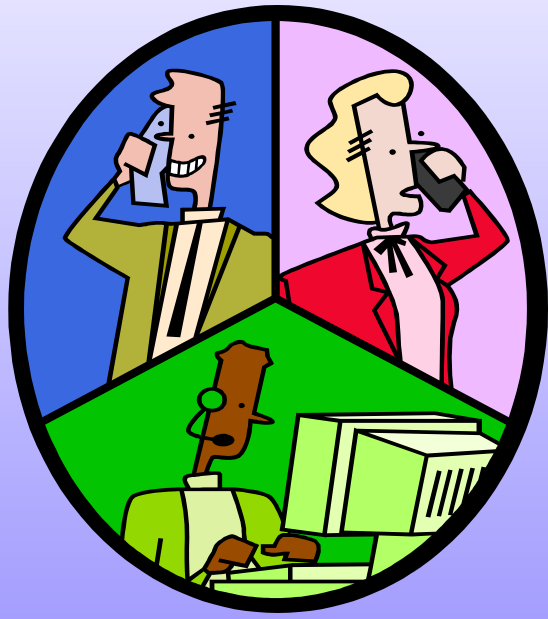
Lifetime Ban



- 18 U.S.C. § 207(a)(1)
- May not:
  - Communicate/appear on behalf of another
  - With “intent to influence”
  - Regarding a “particular matter”
  - Involving specific parties
  - Where participated “personally and substantially” as Federal employee
  - Behind-the-scenes assistance permitted

Representational Restrictions
Definitions

- **Particular matter -- includes a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, or investigation. Generally, does not include rulemaking, formulation of general policy, standards or objectives, or other matters of general application.**

- **Intent to influence -- seeking some discretionary action, ruling, benefit, or approval. Does not include purely social contacts or requesting publicly available information.**

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Representational Restrictions *Definitions*

- Participate personally and substantially -- to participate directly and significantly by decision, approval, recommendation, rendering of advice or investigation. Includes actions of a subordinate if actually directed by the former employee.

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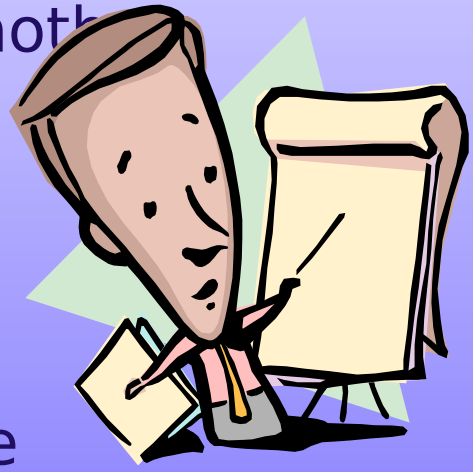
Representational Restrictions
2-Year Ban

- *18 U.S.C. § 207(a)(2).* May not, <u>within 2 years</u> of termination of Government service
  - Communicate/appear on behalf of another
  - With "intent to influence"
  - Regarding a "particular matter"
  - Involving specific parties
  - Under "official responsibility"

  during last year of Government service



- Behind-the-scenes assistance permitted

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Representational Restrictions
Definitions

- **Official responsibility -- direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action.**
- **Administrative authority -- planning, organizing, and controlling matters rather than authority to review or make decisions on ancillary aspects of a matter, such as regularity of budgeting procedures, public or community relations aspects, or EEO considerations.**

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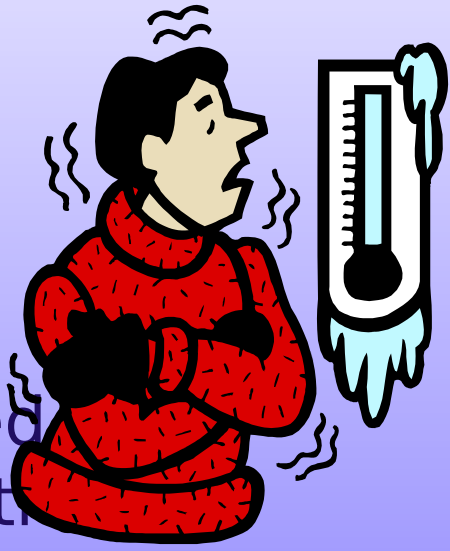
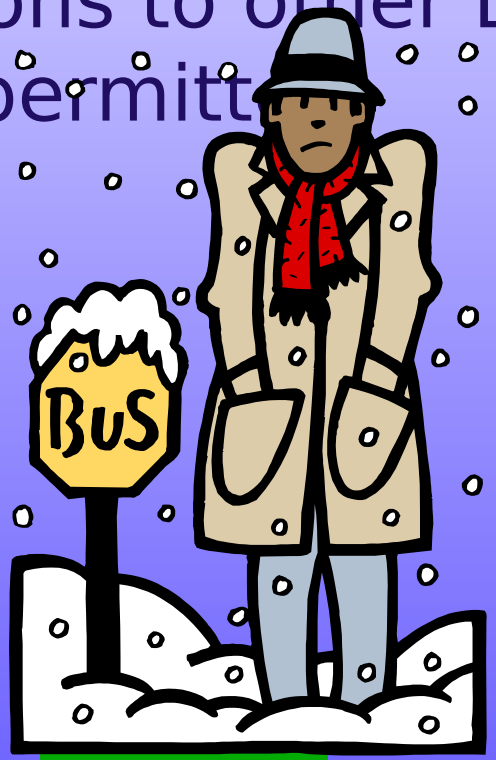
Representational Restrictions
1-Year Cooling-Off Period



- *18 U.S.C. § 207(c)*
  - Applies to former senior employees (personnel whose basic pay exceeded 86.5 percent of the rate for level II of the Executive Schedule (EL II).
  - Prohibits communication or appearance before ***former agency***, on behalf of another with intent to influence, on <u>any matter</u> where official action is sought

1-Year Cooling-Off Period

- Behind-the-scenes assistance permitted
- Communications to other DoD components permitted



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Representational Restrictions
1-year Ban on Treaty Negotiations

- *18 U.S.C. § 207(b).* May not **represent, aid, or advise anyone** concerning ongoing treaty negotiations if:
  - participated personally and substantially in negotiation during last year of service
  - had access to inside information
  - representation, assistance, or advice is based on such inside information
- **NO** behind-the-scenes assistance allowed

Representational Restrictions

1-Year Ban Relating to Foreign Entities

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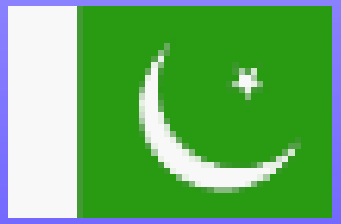
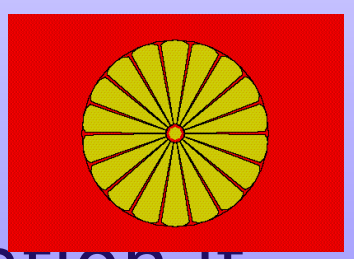
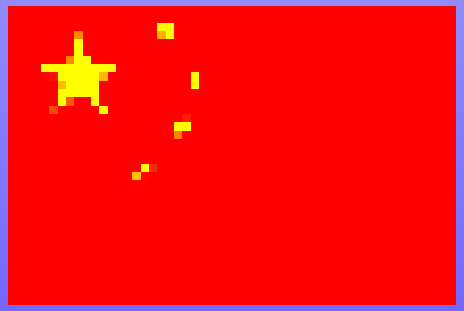
- *18 U.S.C. § 207(f)*
  - Applies to former senior employees (personnel whose basic pay exceeded 86.5 percent of the rate for level II of the Executive Schedule (Ex. II))
  - Prohibits, within 1 year of terminating Government service:
    - **representing foreign entity before any U.S. department, agency, etc. with intent to influence;**
    - **aiding or advising foreign entity with intent to influence decision of U.S. official**
  - **NO** behind-the-scenes assistance

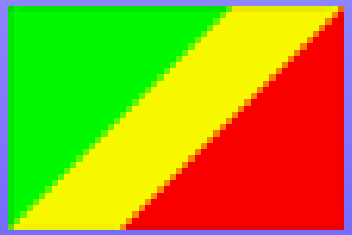


Foreign Entity

- Foreign government
- Person/group exercising sovereign political jurisdiction
- Foreign political parties
- Foreign commercial corporation if exercises the function of a sovereign







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New Procurement Integrity Act

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- Applies to employees who retire on or after 1 January 1997
- Bars acceptance of compensation from contractor for 1 year after certain participation in procurement of:
  - contracts, subcontracts, modifications, and other actions > $10M

Triggers

- Served as Procuring Contract Officer, Source Selection Authority, Source Selection Evaluation Board Member, Chief of Financial or Technical Evaluation Team for procurement > $10M
- Served as Program Manager, Deputy Program Manager, or Administrative Contracting Officer for procurement > $10M

- Personally made decision to:
  - award a contract, subcontract, modification, or task order > $10M
  - establish overhead or other rates applicable to contract > $10M
  - approve issuance of a contract payment > $10M
  - pay or settle a claim > $10M

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Foreign Employment

- Constitution, Article I, § 9, clause 8
  - No title of nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

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Foreign Employment

- Congressional Consent via Statute
  - Civil Employment
  - Military forces of "newly democratic nation"
- SEC Of SERVICE and SECSTATE approval required for employment with a foreign government
  - includes any entity owned or controlled by a foreign government, e.g., commercial or educational entities

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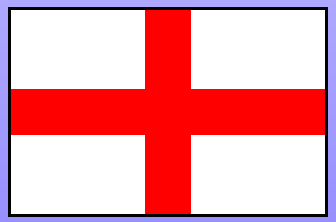
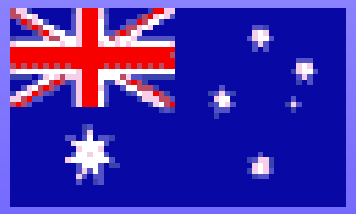
Foreign Employment

- May require registration as a Foreign Agent with Department of Justice
- Loss of Citizenship?
  - Generally means loss of retired pay





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Public Financial Disclosure Filers

- Must file termination SF 278
  - not more than 30 days after retirement date

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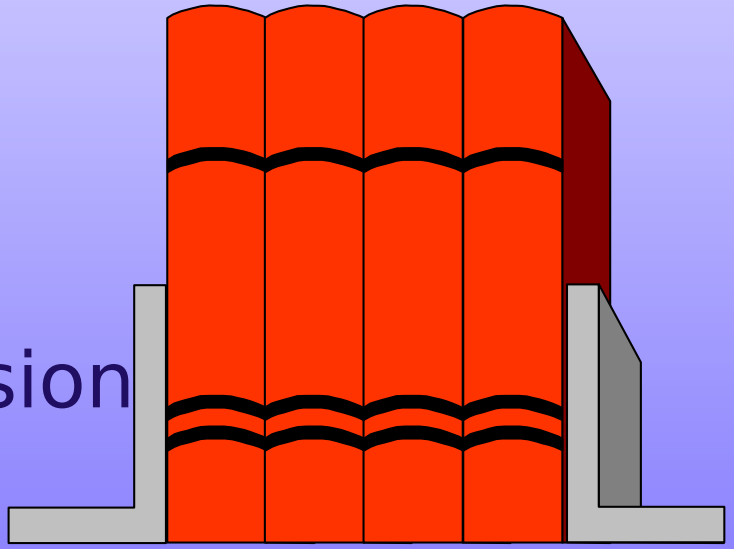
Materials

- PGE Service Employment Questionnaire
- Form Letters/Discussion



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Questions?

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